IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

RPFC.No. 116 of 2004

MC.6/2003 of THE FAMILY COURT, THIRUVALLA.
.....

PETITIONER/COUNTER PETITIONER:

C.SAJUMON, AGED 39 YEARS,
BADHEL PEZHUVILA VEEDU, POOYAPPALLY VILLAGE,
POOYAPPALLY P.O. KOTTARAKKARA TALUK, KOLLAM DIST.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS: PETITIONER.

LILLYKUTTY, AGED 38 YEARS,
KOCHUMUKALIL SHALOM BHAVAN, ADOOR VILLAGE,
KARUVATNRE MURI, ADOOR TALUK, PATHANAMTHITTA DIST.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO. 10437/2004 IN RPFC 116 OF 2004

DISMISSED

13-3-2007 **SD/-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S. TO JUDGE

K.R. UDAYABHANU, J.

R.P.F.C.NO.116 OF 2004-E

DATED THIS THE 13TH DAY OF MARCH 2007

ORDER

The revision petitioner is the counter petitioner in M.C.No.6/2003 and under orders to pay a sum of Rs.500/- towards the maintenance of the petitioner, wife. It is the contention of the revision petitioner that the petitioner is having sufficient income and that she is having share in a rubber plantation from which six rubber sheets per day is the yield out and out of which she would be entitled to three sheets as the property is jointly owned by herself and her sister. It is further contended that the petitioner ought not to have pleaded that she is unable to maintain herself. According to the counsel for the revision petitioner, she should have worked and earned and as there is no pleading that she is unable to work, the provision cannot be invoked. It is submitted that the revision petitioner is a mazdoor in the P & T Department and that he is getting only a sum of Rs.4,000/- per month as salary.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 and 2 and CPW1. The petitioner and her brother have testified with respect to the circumstances that lead to have her a separate residence, i.e. severe manhandling, ill-treatment etc.

Although it is contended by the counter petitioner that wife is a partner in a Textile business, the same was denied by PW1 and no objective evidence to establish the contention of the revision petitioner was produced. It is the contention of the revision petitioner that three rubber sheets to which she is legally entitled, the present market rate would fetch a sum of Rs.300/- per day. I find that the above contention cannot be countenanced as the yield from the rubber tree and its market value would depend on various circumstances including climatic conditions. The above income cannot be said to be a steady one.

4. It is pleaded by the petitioner wife that she is not having any income. PW1 has not been cross examined with respect to her capability to earn by working or by self employment etc. The case with respect to the income that PW1/the petitioner was having at the time and the only admission in this regard is that she is a co-owner with respect to 1.16 acres of rubber plantation along with her sister. The contention that she should have worked and earned are only matters in the realm of speculation as such. The evidence is that she is not a working women and her income is limited to the yield from the rubber trees. I find that the only amount ordered to be paid is

Rs.500/- per month. In the circumstances, I find no reason to interfere in the order of the court below. The revision petition is dismissed.

K.R.UDAYABHANU, JUDGE

ks.